IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REFERENCE NO. 9 OF 2005

Shri A.S. Shivankar
Judge,
Family Court No.2,
Bandra (East),
Mumbai. ..Petitioner

Vs.

Mr. K.K.V. Kurup ..Respondent

Mr. B.H. Mehta, APP for State.
Mr. K.K.V. Kurup - respondent in person.

CORAM: B.H. MARLAPALLE & NARESH H. PATIL,JJ.

Reserved on : October 07, 2006.

Pronounced on : October 13, 2006.

JUDGMENT (Per B.H. Marlapalle,J.):-

1. This contempt petition arises from a reference made by Shri A.S. Shivankar, learned Judge of the Family Court No.2 at Mumbai under Section 15(2) of the Contempt of Courts Act, 1971 (the Act for short).

2. In M.J. Petition No.A-397 of 2003, an application for interim maintenance was moved by the petitioner-wife on 17/4/2003 and the present respondent Mr.K.K.V. Kurup had appeared as an Advocate for the respondent no.1-husband. When the

Maintenance Application was taken up for hearing, the respondent-husband filed a written application at Exh.16 and made allegations against the then learned Judge Shri Palnitkar, who consequently requested the learned Principal Judge, Family Court, for transferring the case from his court. The respondent-husband again filed an application at Exh.17 on 3/1/2005 stating that he has received a phone call to the effect that on giving certain amount to the Presiding Judge of the Family Court favourable orders could be passed and, therefore, he made the allegations. This application at Exh.17 was sought to be withdrawn by a pursis at Exh.19 with a request not to transfer the application and to be heard by the same court. The application, therefore, remained pending and Shri Shivankar took charge of the said court on 9/5/2005. On 1/7/2005 the respondent-husband submitted an application at Exh.20 for adjournment on the ground that his Advocate Mr.Kurup had gone to South America (Brazil) and would be returning only after 20/7/2005. The application was opposed on number of grounds. The learned Judge passed the following order:-

> "It is worth mentioning that application for interim maintenance is pending since last two years. Maintenance is claimed for children. So granting an adjournment may cause prejudice to the petitioner. Hence, the order:
>
> Adjournment as sought for is granted subject to costs of Rs.1000/-."

. The costs amount was deposited forthwith and the application was adjourned to 23/9/2005. However, the Advocate for the petitioner-wife moved an application at Exh.21 on 6/8/2005 to prepone the date and also had given notice to the other side. The application was taken on board and was heard on 29/8/2005. As soon as the application was called out, it is alleged that the respondent violently shouted,

> "I have no faith in this Court. My client will not get justice. You are corrupt judge and I would remove you from the Court and also from the service."

3. The learned Judge was of the view that this verbal attack on him was an insult and disregard to the court and the allegations scandalised the court. The respondent was, therefore, told that on account of such a conduct the permission granted to represent the respondent-husband would be revoked. The respondent was uncontrollable and, therefore, the peon and the

police were directed to take the respondent out of the court hall. This incident had happened in the presence of number of Advocates who were sitting in the court hall and some of them were, Dilip Teli, Shilpa Joshi, Anita Dalvi, Alka Khokar, Anagha Shingrut, S.K. Sheela, J.J. Shah, Prashant Chunekar and Madhubala Shetty and also the litigants present.

4. The learend Judge, therefore, thought it appropriate to issue a show-cause notice to the respondent, which was issued on 2/9/2005. He was called upon to submit his reply as to why reference should not be made to this court for initiating appropriate action against him under the Act. The reply was to be filed within one week from the receipt of the notice. The respondent did not file reply and consequently by his letter dated 21/9/2005 the learned Judge submitted the reference to this court.

5. Cognizance of contempt was taken by the order dated 19/10/2005 by issuing notice to the respondent why action under the Contempt of Courts Act be not taken. Inspite of service of notice, respondent failed to appear and, therefore, a bailable warrant

was issued and he appeared on 6/3/2006. Draft charges were placed on record by the APP, the charges were framed on 3/4/2006 and thereafter again the respondent remained absent, which caused issuance of second bailable warrant on 10/7/2006, which was recalled on 3/7/2006 on the appearance of the respondent. The charge framed against the respondent reads as under:-

> ". You K.K.V. Kurup, an Advocate, appeared in the Family Court, Court Room No.2 without the permission of the court as required under section 13 of the Family Court Act read with rule 37 of the Family Court Rules, 1988, on 29/08/2005 when Petition No.A-397/2003 between Mrs. Mahalaxmi Joginder Singh Kahaan v/s. Mr. Johind Singh was called out for hearing of interim application. You entered the Court Room alongwith parties and violently shouted by raising your voice and uttered the following words. "You passed the order behind my back. Awarded cost of Rs.1000/-. I have no faith in this Court. My client will not get justice. You are corrupt. I will remove you from the Court and service." This act of yours has scandalised and lowered the authority of the Court and therefore, you are guilty of committing criminal contempt under section 2(c) of the Contempt of Courts Act, 1971. You are therefore, liable for punishment under the Contempt of Courts Act, 1971."

. He filed his reply and raised preliminary objections regarding limitation under Section 20 of the Act, non-compliance of the rules and that the paper book was not supplied to him. After the paper

book copy was made available to him, he filed a fresh reply and reiterated all along that he made the above quoted allegations against the learned Judge but he was provoked to make the said allegations as he was thrown out of the court hall with the help of the police and the learned Judge has passed an ex parte order revoking his Vakil Patra. The respondent claims that he is a crusader against corruption in his life and on account of his representations/complaints submitted to the Hon'ble the Chief Justice, actions have been taken against more than one judicial officers.

6. When the scheme of Section 20 of the Act and the Rules framed by this court called as "The Contempt of Courts (Bombay High Court) Rules, 1994" were perused by him, the respondent gave up the issue of limitation as well as the non-compliance of the Rules.

7. As noted earlier, the respondent has stood by his allegations as set out in the reference made by the learned Judge and the show-cause notice issued against the respondent on 2/9/2005 by the very same Judge. Despite this repeated reiterations, the

respondent claims that he is not guilty of contempt within the meaning of Section 2(c) of the Act. As per him the allegations were made against a corrupt Judge and he was unfit to occupy the seat of a Judge in the Family Court, his behaviour was unbecoming of a Judge and he had no reasons to pass an order revoking the permission granted in his favour so as to represent the original respondent-husband.

8. The record shows that though the respondent did not reply to the show-cause notice issued by the referring court, he had addressed a letter dated 24/10/2005 to the learned Judge and it would be appropriate to reproduce the following allegations/statements in the said letter:-

> ".....Having put in 40 yrs. of practice in Bombay as a faithful and loyal Advocate, what I have to my credit is not tonnes of black money, but definitely appreciation for the crusade against corruption! Again I can not at all claim success in that field, so long as people like you are still occupying the judicial seats!!
>
> . Sir, your letter dated 2/10/2005, is the worst one I have ever come across in my professional career. That letter, no doubt, exposes you in your true colours.
>
> . People have been writing again and again that human beings should not be canines.

But despite my best efforts not to see them among the canines, I am disunited to note that even some judicial seats are occupied by them. But if I have to talk only in a language which is known to CANINES, your usage is most appropriate namely " I have barked at you". Yet in a bitter way. Is it not an utter shame that a Judge like you are only with 'barking language' and that you do the same against an Advocate! If I really did so, it was to make you understand what I was speaking-in language which is familiar to canines!!

. You are the most corrupt one - I repeat! Most corrupt one! occupying the seat of Family Court. If you think that with your threats and cancellation of Vakalatnamas, the advocates and clients who are victims at your hand would ever keep quiet, such thinking is absolutely foolish. I and other Advocates and clients have evidence to show that you have been constantly accepting the corruption moneys and demanding of lady clients and junior Advocates other favours bodily. If not granted, you always come out with your character. It is utter shame that inspite thereof, some people remained silent. Don't think that we will also keep quiet. It was pointed out by me that how your predecessor was removed from the office in the same matter. This is not a forecast of a news paper - but no doubt - a deadly forecast for you - unless you are prepared to mend your inhuman-character!?

. A detailed complaint about your corrupt acts, including womenisation is being forwarded to the higher authorities and I hope that trust that large scale corruption can not go unquestioned however your mighty are your guardians. On the day in question your conduct towards me was worst than that of a street man, craving for some immediate gains and your anger was understandable inasmuch as you could not get the full benefit of your corrupt acts from the opponent lady even though the lady had promised to surrender to

you fully.

. Sir, the non-furnishing of the Roznama to hide from me the order passed on that day behind my back, gives me the impression that you, with the help of the other lady for whom you were bent upon to favour, you shall play through your nose.

. Beware that I am not one of those Advocates who could either be brow-beaten or cowed down by threats of contempt proceedings. On the contrary it is my genuine duty to get such proceedings initiated against people like you and you ilk! I do not want to spoil this reply incorporating herein the distrust language used by you in the open court and the threats issued to me.

. From Your letter under reply it appears that you have some Godfather who is more corrupt than you. Therefore, I challenge you to resign from the post and come out to fight such false and dishonest complaints in which apparently you are an expert. I am prepared to fight this bogus complaint, intended to beat me to submissions to continue with your most shameless and corrupt practice."

9. Along with the paper book a copy of this letter was also provided to the respondent on his demand and in his arguments before us he accepted to have addressed the said letter to the learned Judge and indeed stated that he stands by every word stated in the said letter. The respondent did not stop here alone but indeed in the reply he submitted before us on 25/9/2006, he proceeded to make unsavoury remarks,

not criticism, against the orders passed by at least four learned Judges of this Court so as to embolden his stand that he is a crusader against corruption in judiciary and to highlight the profile of his hallmark of his career as an Advocate who cannot tolerate corrupt judges.

10. An Advocate knows fully well that if a judicial order is passed against him, it can be challenged before the higher forum by initiating appropriate legal proceedings and this is by and large known to the litigants as well. But in the case of the respondent he knows nothing of legal remedy as he poses and only know affront disrespect, arrogance and to make scandalous and frivolous remarks against the Presiding Officer who passes orders against him or he apprehends that the order may go against him. Respect to the judicial order appears to be lost in the mind of the respondent and more so when the proceedings result or likely to result against him. Even his behaviour before us on several occasions we heard exhibited arrogance, irrelevant arguments and self praise and indeed nothing of repentance or remorse. Disrespect to the judiciary and more particularly to

the court which passes an order or is likely to pass order against him appears to be the respondent's forte and we are shocked that such is the behaviour and such are the credentials of an Advocate who claims to have spent 40 years in the practice of law. Though not relevant, but we must mention that this is not the only contempt petition pending against the respondent before us.

11. The learned referring Judge has forwarded to us a copy of the show-cause notice, copy of the order dated 29/8/2005, his request letter dated 30/8/2005 to the learned Principal Judge of the Family Court for transfer of M.J. Petition No.397/2003 from Court Room No.2 and the statements of seven Advocates who were present in his court on 29/8/2005 when the incident involving the respondent took place. All these Advocates in their written statements submitted to the learned referring Judge have described what the respondent uttered when the application for interim maintenance was called out on 29/8/2005 and as per them the utterances are not limited to what the learned Judge produced in the reference and as noted earlier. As per these Advocates the respondent

uttered the following disgraceful words:

> "You have no reason to pass orders behind my back. I will not tolerate this. I am fighting against corruption. I will not get justice from this Court and I have no faith. You are prejudiced. I had complained against the earlier judge and he was removed. I can also get you removed from this Court. You have come from Small Causes Court and I know you very well. You are corrupt. I am not afraid of you. I will see you."

12. All these Advocates in their written statements forwarded to us have clearly stated that at around 12.45 p.m. when the interim maintenance application was called out and before the learned Judge would himself appraise of the matter, the respondent intervened and started making wild and baseless allegations against the learned Judge for reasons best known to him and the allegations were as reproduced hereinabove. These written statements were also made available to the respondent and he had nothing to say on the same.

13. It is well settled in law that if any learned Member of the Bar has any complaint against the misbehaviour of a Presiding Officer, he has to approach either directly or through the Bar to the Senior Judge or the Principal Judge or the Chief Justice, as the case may be, and lodge the complaint so that the same is investigated into and due steps are taken by way of corrective measures, if so warranted. The respondent does not appear to believe in the legal ways and means. He, in the course of the arguments, referred to the letter dated 30/10/2005 he had addressed to the Hon'ble the Chief Justice of this court as well as the Principal Judge of the City Civil Court against the conduct of Mr.Shivande, Judge, Family Court. The respondent claimed that the name Shivande was wrongly written and it ought to be read as Shivankar i.e. the referring learned Judge. We called upon the respondent to show any incident in which he was personally involved in the allegations set out in the said letter. We also called upon him to give any incident in which either from his personal knowledge or through any of his clients he was certain that the learned Judge had demanded money and the

respondent had no such instance to place before us. He appears to be professionally qualified to make reckless and wild allegations and indulged in character assassination by resorting to mud-slings against the Judicial Officers who passed or are likely to pass orders against him and his behaviour is not in isolation but in repetitions. In Halsbury's Laws of England (4th Edition) Vol.9, para 27, at page 21, it is stated that the scandalising the court would mean any act done or writing published which is calculated to bring a court or a Judge into contempt, or to lower his authority, or to interfere with the due course of justice or the lawful process of the court. Scurrilous abuse of a Judge or court, or attacks on the personal character of a Judge, are punishable contempts. Punishment is inflicted, not for the purpose of protecting either the court as a whole or the individual Judges of the court from repetition of the attack, but for protecting the public, and especially those who either voluntarily or by compulsion are subject to the jurisdiction of the court, from the mischief they will incur if the authority of the tribunal is undermined or impaired. In the case of C. Ravichandran Iyer vs. Justice A.M.

Bhattacharjee **[(1995) 5 SCC 457]** their Lordships stated in para 31 regarding the freedom of expression and duty of an Advocate in the following words:-

> "It is true that freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution is one of the most precious liberties in any democracy. But equally important is the maintenance of respect for judicial independence which alone would protect the life, liberty and reputation of the citizen. So the nation's interest requires that criticism of the judiciary must be measured, strictly rational, sober and proceed from the highest motives without being coloured by partisan spirit or pressure tactics or intimadatory attitude. The Court must, therefore, harmonise constitutional values of free criticism and the need for a fearless curial process and its presiding functionary, the Judge. If freedom of expression subserves public interest in reasonable measure, public justice cannot gag it or manacle it; but if the court considered the attack on the Judge or Judges scurrilous, offensive, intimidatory or malicious, beyond condonable limits, the strong arm of the law must strike a blow on him who challenges the supremacy of the rule of the law by fouling its source and stream. The power to punish the contemner is, therefore, granted to the court not because Judges need the protection but because the citizens need an impartial and strong judiciary."

14. The acts of the respondent cannot be termed as bona fide criticism of the courts' working so as to give him the benefit of Section 6 of the Act. In our considered opinion his behaviour before the referring

court on 29/8/2005, his subsequent letter dated 24/10/2005 addressed to the same learned Judge and the averments made in the written reply filed by him before us do make out a case of scandalising the court, interferes with the administration of justice and interferes with the judicial proceedings, thus, meeting all the ingredients of Section 2(c)(i) to (iii) of the Act. We, therefore, hold him guilty of contempt of court within the meaning of Section 2(c) of the Act and allow the reference.

15. When it comes to awarding punishment under Section 12 of the Act, it is well settled that awarding fine is by way of rule and awarding simple imprisonment is by way of exception. We have no doubt in our minds that this is an exceptional case involving an Advocate claiming to be of a standing of 40 years practice in law. We have discussed in detail his profile, character and the professional attributes when orders are either passed or are likely to be passed against him and, therefore, we are satisfied that he must be punished with simple imprisonment as well as fine.

16. We, therefore, award to Mr.K.K.V. Kurup the punishment to suffer simple imprisonment for one week and to pay a fine of Rs.500/- and in default to suffer simple imprisonment for one more day.

17. After this judgment was pronounced, Mr. K.K.V. Kurup, the contemnor submitted an oral application praying for stay of this order so that he could challenge the same before the Apex Court. Oral application is hereby granted and the operation of this order of punishment is stayed for a period of two months subject to remittance of fine amount of Rs.500/- wtihin one week from today.

(Naresh H. Patil, J.) **(B.H. Marlapalle,J.)**